IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 467 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THE UNION OF INDIA THROUGH THE STATE OF GUJARAT

Versus

HARISH CHANDRALAL

Appearance:

MR ST MEHTA APP for Petitioner

MR BK OZA for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/09/2000

ORAL JUDGEMENT

This Revision is preferred by the State against the judgment and order dated 15th September, 1993, passed by the learned Special Judge, Ahmedabad, below application Ex. 72 in Special Criminal Application No. 39/90.

The Special Criminal Case No. 39/90 was registered against five persons viz. one Harishchandra Lal, Deputy Director, Finance & Accounts, ONGC, Shri Jogindarpal Kohli, Finance & Accounts Officer, ONGC, Shri Abdulgani Haji Malek, the Accounts Officer, Grade-I (Head Cashier), ONGC, Shri Piyush Gajjar, and one Shri Mahmad Hanif Gohil, a Clerk in Municipal Corporation, Bharuch. The accused have been alleged to have committed offences punishable under sections 120-B, 420, 468, 471 and 477-A IPC, and section 5 (2) read with section 5 (1) (d) of the Prevention of Corruption Act, 1988. The allegation is that the accused - Shri Piyush Gajjar prepared false bills in the name of one non-existing Firm viz. M/s Shiv Castings, Baroda, for the total value of Rs. 17,54,325-75 PS, which in connivance with the said Shri Piyush Gajjar, the three accused officers of the ONGC processed, approved and paid. Shri Harishchandra Lal, the accused no.1 made an application Ex. 72 praying for discharge. It was contended that the said accused was a mere signatory of the cheque and there was no evidence connecting the said accused to the offence alleged. The learned Special Judge under his order dated 15th September, 1993, discussed the evidence in detail and held that there was nothing on the record to support the allegation of conspiracy, nor was there any evidence connecting the applicant to the offence alleged. The learned Judge held that the meeting of the mind was not proved and directed the discharge of the applicant. Feeling aggrieved, the State has preferred the present Revision.

I am of the view that the learned Judge was not right in appreciating the evidence in detail and in holding that the meeting of mind was not proved. Mens-rea is a question of mental state and may not be proved by documentary evidence alone. It was too early a stage to hold that there was no meeting of mind. The discharge of the applicant-accused no.1 was, therefore, wholly unjustified. Besides, the accused no.2 Shri Jogindarpal Kohli, Finance & Accounts Officer also had made a similar application at Ex. 48 which was allowed on 2nd July, 1993, on the same ground. Criminal Revision Application No. 378/93 preferred against the said order dated 2nd July, 1993, has been dismissed by this court (Coram : Mr.Justice R.D.Vyas {as he then was}) on 14th December, 1993. The order of discharge of the said accused has been set aside. I am informed that the said order of 14th December, 1993, was challenged before the Hon'ble Supreme Court in Special Leave Petition (CR) No. 2374/94 which too was rejected on 7th October, 1997.

In view of the above discussion, the present Revision deserves to be allowed. The judgment and order dated 15th September, 1993, passed by the learned Special Judge, Ahmedabad, below application Ex. 72 in Special Criminal Case No. 39/90 is quashed and set aside. Rule is made absolute. The learned trial Judge shall now proceed further with the trial against all the accused persons. The Registry shall return R&P forthwith.

(MS R.M.DOSHIT J)

JOSHI